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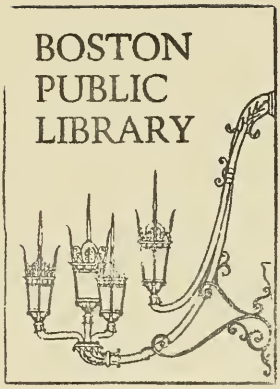
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MEMORANDUM

February 12, 1986

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TO: BOSTON REDEVELOPMENT AUTHORITY AND STEPHEN COYLE, DIRECTOR

FROM: KELLY D. KING, ASSISTANT GENERAL COUNSEL
PAUL L. McCANN, EXECUTIVE ASSISTANT TO THE DIRECTOR

SUBJECT: CONTINUATION OF THE HEARING TO CONSIDER THE FIRST AMENDMENT TO THE REPORT AND DECISION ON POST OFFICE SQUARE 121A CORPORATION

On May 10, 1984, the Authority issued a Report and Decision (the "Report and Decision") pursuant to the provisions of M.G.L. c. 121A and St. 1960, c. 642, as amended, consenting to the formation of Post Office Square Redevelopment Corporation (the "Corporation") as an urban redevelopment corporation for the purpose of carrying out a project (the "Project") in Boston, Massachusetts. The Project consists of the acquisition of a parcel of land in downtown Boston containing approximately 1.56 acres and bounded by Congress, Franklin, Pearl and Milk Streets, the demolition of the public parking garage now located thereon and the construction of a new underground parking garage and grade level park.

On January 23, 1986, the Authority held a public hearing to consider a First Amendment to the Report and Decision of the Corporation. The Authority voted to continue the hearing until February 12, 1986 at 2:30 p.m. to allow the attorneys representing the opposition to the Amendment to submit a Brief by February 4, 1986 with a Rebuttal Brief by applicant's attorneys due by February 11, 1986.

In accordance with the Amendment, attached hereto, the Corporation requests that the Report and Decision provide for a development agreement which delineates, among other things, a detailed design review process and an interim transportation management plan.

Also, included is a revised form of a 6A contract and changes resulting from the Attorney General's opinion concerning the computation of the excise payable with respect to the Project pursuant to Section 10 of Chapter 121A.

An appropriate vote follows:

VOTED: That the document presented at this meeting entitled "First Amendment to the Report and Decision on the Application of Subsidiaries of Friends of Post Office Square, Inc. for the Authorization and Approval of a Project under Massachusetts General Laws Chapter 121A, as Amended, and Chapter 652 of the Acts of 1960, as Amended, and for Consent to the

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Formation pursuant to said Chapter 121A of an Urban Redevelopment Corporation under the name Post Office Square Redevelopment Corporation for the Purpose of Undertaking and Carrying Out the Project under said Chapter 121A," be and hereby is approved and adopted.

LEG3/H/020586

CABLE: GILMAC

GILMAN, McLAUGHLIN & HANRAHAN
COUNSELLORS AT LAW
470 ATLANTIC AVENUE
BOSTON, MASSACHUSETTS 02210

(617) 482-1900

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JONATHAN B BREEN
DONNA E COHEN
JAMES W MURPHY
ROBERT S SINSHEIMER
PHYLLIS NEIMARK
JOANNE C TAKAGI
DAVID L KLEBANOFF

January 14, 1986

BY HAND

Kane Simonian, Secretary
Boston Redevelopment Authority
Offices of the BRA, 9th Floor
New City Hall
Boston, Massachusetts

Re: Application of Post Office Square Redevelopment Corporation

Dear Mr. Simonian:

I am enclosing herewith a Motion which I desire to have filed in the above entitled matter and which I will take up with the Board at the continued hearing of this Application.

I have furnished a copy of the within Motion by having the same delivered today to James B. White, Esquire, Palmer and Dodge, One Beacon Street, Boston, MA, the attorney of record for the applicants.

Sincerely yours,

Walter H. McLaughlin, Sr.

WHMSr:ljd
Enclosure

COMMONWEALTH OF MASSACHUSETTS
BOSTON REDEVELOPMENT AUTHORITY

SUFFOLK, ss.

* * * * * * * * * * * * * * * * *
*
IN RE: CHAPTER 121A *
APPLICATION OF POST OFFICE *
SQUARE REDEVELOPMENT CORP. *
*
* * * * * * * * * * * * * * * * *

MOTION TO AMEND REPORT AND DECISION
OF THE BOSTON REDEVELOPMENT AUTHORITY
DATED MAY 10, 1984

Now comes First Franklin Corporation, the Lessee of the property presently described as "The Project Area", and commonly known as the Post Office Square Garage and moves for leave to submit supplemental evidence so that the Authority may amend the Decision and Report of the Boston Redevelopment Authority ("the Board") dated May 10, 1984 by striking out the first paragraph of (3), subparagraph (d), described as "The Project Area" in said Report, and any other portions of the report where the passage of time requires the amendment of the Board's findings and conclusions and assigns as cause therefore the following:

1. The findings made by the Boston Redevelopment Authority as therein set forth were based upon "the evidence contained in the application and presented at the public hearing, an inspection of The Project Area by the members of the Authority and the Report of Simpson, Gumpertz & Hagger, Inc., consulting engineers to the Board."

2. The inspection by Simpson, Gumpertz & Hagger, Inc. is dated March 3, 1984 and the finding of the Board was dated May 10, 1984.

3. The finding of the Board that The Project Area is decadent as that term is defined in Section 1, Chap. 121A is now twenty months old. Since that period of time, extensive repairs, costing several hundred thousands of dollars have been made to The Project Area and said findings no longer reflect the true condition of The Project Area as will be established by evidence to be presented at said continued hearing.

4. The evidence presented concerning financial feasibility and cost of the project is over two years old. There have been substantial changes which render many of the assumptions inaccurate.

First Franklin Corporation
By Its Attorneys,

Walter H. McLaughlin, Sr.
Gilman, McLaughlin & Hanrahan
470 Atlantic Avenue
Boston, MA 02210
Telephone: (617) 482-1900

Dated: Jan. 14-1985

1208C

FIRST AMENDMENT TO APPLICATION FOR APPROVAL TO CARRY OUT A PROJECT IN BOSTON, MASSACHUSETTS UNDER MASS. G.L. c. 121A, AS AMENDED, AND STAT. 1960, c. 652, AND FOR CONSENT TO THE FORMATION OF POST OFFICE SQUARE REDEVELOPMENT CORPORATION

The undersigned (the "Applicants") hereby amend their Application (the "Application") dated November 14, 1983 to the Boston Redevelopment Authority (the "Authority") pursuant to the provisions of Mass. G.L. c. 121A, as amended, ("Chapter 121A") the provisions of Stat. 1960, c. 652 and the rules and regulations of the Authority, as provided below. The subject of the application is the Post Office Square Redevelopment Project (the "Project"), which was approved by the Authority in its report and decision (the "Report and Decision") on the Application, dated May 10, 1984.

1) The Applicants hereby request that the Authority determine that the Development Agreement attached hereto as Exhibit A (the "Development Agreement") is consistent with and in furtherance of the Report and Decision, and that the Report and Decision be amended to provide that:

(a) the design review process outlined in Article II (Design) of the Development Agreement constitutes compliance by the Applicants of their obligation pursuant to Section 3(a) of the Application, and such design review process shall be the sole mechanism for design review of the Project;

(b) the urban redevelopment corporation's obligations under Article III (Temporary Transportation Management Program) of the Development Agreement shall be in lieu of the Applicants' obligation to provide substitute parking pursuant to Section 3(a) of the Application, and such requirement of substitute parking shall be deleted from the Report and Decision; and

(c) the provisions of Article IV (Project Financing) of the Development Agreement, concerning the rights of the City and Authority to approve the financing for the Project, supersedes paragraph 1 of the Minimum Standards for Financing, Construction and Maintenance and Management of the Project attached to the Application as Exhibit 18 and referenced in the Report and Decision, and said paragraph 1 shall be deleted.

2) The Applicants request that the Authority approve the execution by the Corporation of a Contract authorized under Section 6A of Chapter 121A, in substantially the form attached hereto as Exhibit B, and that the Authority determine that such Contract conforms to the requirement for

such a contract contained in the last paragraph of Section E of the Report and Decision.

3) The Applicants hereby request that the Authority approve the following amendment to Appendix 17 of the Application (Summary of Basic Provisions of the Ground Lease Between the Corporation and the Partnership), and that the Authority amend page 6 of the Report and Decision to refer to Appendix 17, as amended as follows:

a) The "TERM" is amended to read as follows: The Term of the lease shall be as determined pursuant to the Development Agreement for the Project between the Corporation, the Authority and the City of Boston.

b) The "RENT" provision is amended by deleting the definition of "Applicable Percentage" and substituting the following in its place:

"Applicable Percentage" shall mean, the following percentages during the following periods:

(i) Prior to the date on which the garage portion of the Project is placed in operation, the Applicable Percentage shall be zero;

(ii) During the first year after the garage is placed in operation (and for the portion, if any, of the year in which the garage is placed in operation), and thereafter, the Applicable Percentage shall be one hundred percent (100%).

4) Subsequent to the Report and Decision, the Commissioner of Assessing of the City of Boston, by letter dated April 30, 1985, requested the opinion of Ira A. Jackson, Commissioner of the Massachusetts Department of Revenue, as to the proper calculation of the excise payable with respect to the Project pursuant to Section 10 of Chapter 121A . The Commissioner of Revenue referred the Request for Opinion to the Attorney General of the Commonwealth, and on November 6, 1985, the Attorney General rendered his opinion, which upheld the computation of the Section 10 excise as proposed in the Application. A copy of the Attorney General's Opinion is attached as Exhibit C. In view of such opinion, the Applicants request that the Authority amend the second sentence of the fifth paragraph of Section E of the Report

and Decision by deleting the words: "Subject to receipt by the Authority of approval in writing by the Department of Revenue, Commonwealth of Massachusetts...".

EXECUTED this twenty-third day of December, 1985.

PROGRAMS FOR PARKING, INC.
By its attorney:

James B. White
PALMER & DODGE

PARKING IMPROVEMENTS, INC.
By its attorney:

James B. White
PALMER & DODGE

BETTER TRAFFIC, INC.
By its attorney:

James B. White
PALMER & DODGE

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

December 23, 1985

Then personally appeared the above named James B. White, attorney for PROGRAMS FOR PARKING, INC., PARKING IMPROVEMENTS, INC., and BETTER TRAFFIC, INC., and, being duly sworn, acknowledged the foregoing instrument to be his free act and deed on behalf of such corporations. Before me,

Notary Public
My commission expires:

JOHN E. RATTIGAN, JR., Notary Public
My Commission Expires Jan. 5, 1990

BOSTON REDEVELOPMENT AUTHORITY

FIRST AMENDMENT TO THE REPORT AND DECISION ON THE APPLICATION OF SUBSIDIARIES OF FRIENDS OF POST OFFICE SQUARE, INC., FOR THE AUTHORIZATION AND APPROVAL OF A PROJECT UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 121A, AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960, AS AMENDED AND FOR CONSENT TO THE FORMATION PURSUANT TO SAID CHAPTER 121A OF AN URBAN REDEVELOPMENT CORPORATION UNDER THE NAME POST OFFICE SQUARE REDEVELOPMENT CORPORATION FOR THE PURPOSE OF UNDERTAKING AND CARRYING OUT THE PROJECT UNDER SAID CHAPTER 121A

A. Prior Proceedings. Reference is made to the "Report and Decision on the Application of Subsidiaries of Friends of Post Office Square, Inc., for the Authorization and Approval of a Project under Massachusetts General Laws Chapter 121A, as Amended, and Chapter 652 of the Acts of 1960, and for Consent to the Formation pursuant to said Chapter 121A of an Urban Redeveloment Corporation under the name Post Office Square Redevelopment Corporation for the Purpose of Undertaking and Carrying Out the Project" (the "Report and Decision") adopted by vote of the Boston Redevelopment Authority (the "Authority") at a meeting held May 10, 1984. All terms used herein shall have the same meanings as set forth in the Report and Decision.

B. Amendment to Application. By a First Amendment to the Application, dated December 23, 1985 (the "First Amendment"), the Applicants have sought authorization and approval from the Authority for certain amendments to the Report and Decision. A copy of the First Amendment is attached hereto as Exhibit A.

C. The Hearing. A public hearing (the "Public Hearing") was held January 9, 1986, in the offices of the Authority, at the New City Hall, Room 921, Boston, Massachusetts 02201, by the Authority on the First Amendment. Due notice of the Public Hearing was given by publication on December 28, 1985, in the Boston Herald American, a daily newspaper of general circulation published in Boston, and by mailing postage prepaid in accordance with Rule 4 of the Authority's Rules and Regulations governing Chapter 121A projects in the City of Boston, and in accordance with the provisions of Section 13 of Chapter 652 of the Acts of 1960, as amended. Robert L. Farrell, Chairman of the Authority and Joseph J. Walsh, James K. Flaherty, Clarence J. Jones and Michael F. Donlan, members of the Authority, were present throughout the hearing.

D. Authority Action. In acting upon the requests for approval of the First Amendment and for an appropriate amendment to the Report and Decision, the Authority has considered the First Amendment and all documents and exhibits filed therewith or referred to therein, the records of the

Authority with respect to the Project made prior to the First Amendment, and all of the documents, testimony and evidence submitted to the Authority at the Public Hearing.

The Report and Decision is hereby amended to the extent necessary to reflect the First Amendment to the Application, which is hereby approved. More particularly, the Authority hereby acts as follows:

1. The Authority hereby determines that a Development Agreement in substantially the form attached to the First Amendment as Exhibit A (the "Development Agreement"), is consistent with and in furtherance of the Report and Decision, and the Report and Decision is hereby amended as follows:

   (a) the design review process outlined in Article II (Design) of the Development Agreement constitutes compliance by the Applicants of their obligation pursuant to Section 3(a) of the Application, and such design review process shall be the sole mechanism for design review of the Project;

   (b) the urban redevelopment corporation's obligations under Article III (Temporary Transportation Management Program) of the Development Agreement shall be in lieu of the Applicants' obligation to provide substitute parking pursuant to Section 3(a) of the Application, and such requirement of substitute parking is hereby deleted from the Report and Decision; and

   (c) the provisions of Article IV (Project Financing) of the Development Agreement, concerning the rights of the City and Authority to approve the financing for the Project, supersedes paragraph 1 of the Minimum Standards for Financing, Construction and Maintenance and Management of the Project attached to the Application as Exhibit 18 and referenced in the Report and Decision, and said paragraph 1 is hereby deleted.

2. The Authority hereby authorizes the Director to sign on behalf of the Authority, the Development Agreement, with such modifications as he deems appropriate, and any related documents he deems necessary and appropriate in furtherance of the Report and Decision.

3. The Authority hereby approves the execution by the Corporation of a Contract authorized under Section

6A of Chapter 121A, in substantially the form attached to the First Amendment as Exhibit B, and the Authority hereby determines that such Contract conforms to the requirement for such a contract contained in the last paragraph of Section E of the Report and Decision.

4. The reference on page 6 of the Report and Decision, which refers to Appendix 17, is hereby amended to refer to Appendix 17, as amended as follows:

   a) The "TERM" is amended to read as follows: The Term of the lease shall be as determined pursuant to the Development Agreement for the Project between the Corporation, the Authority and the City of Boston.

   b) The "RENT" provision is amended by deleting the definition of "Applicable Percentage" and substituting the following in its place:

      "Applicable Percentage" shall mean, the following percentages during the following periods:

      (i) Prior to the date on which the garage portion of the Project is placed in operation, the Applicable Percentage shall be zero;

      (ii) During the first year after the garage is placed in operation (and for the portion, if any, of the year in which the garage is placed in operation), and thereafter, the Applicable Percentage shall be one hundred percent (100%).

5. The Authority hereby amends the second sentence of the fifth paragraph of Section E of the Report and Decision by deleting the words: "Subject to receipt by the Authority of approval in writing by the Department of Revenue, Commonwealth of Massachusetts...".

E. Effect on Environment. The Authority hereby finds that its approval of the First Amendment will have no impact on the environment.

Except to the extent inconsistent herewith, all findings, determinations, approvals and consents as set forth in the Report and Decision are hereby ratified and confirmed.

EXHIBIT A

DEVELOPMENT AGREEMENT

THIS AGREEMENT is made as of this ____ day of _____, 1985 by and among the CITY OF BOSTON, a municipal corporation (the "City"), acting by and through its Mayor, the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (the "Authority"), and POST OFFICE SQUARE REDEVELOPMENT CORPORATION, a Massachusetts corporation (the "Corporation").

WITNESSETH:

WHEREAS, on May 10, 1984, the Authority issued a report and decision (the "Report and Decision"), pursuant to the provisions of M.G.L. c. 121A and St. 1960, c. 642, as amended (collectively, "Chapter 121A"), consenting to the formation of the Corporation as an urban redevelopment corporation for the purpose of carrying out a project (the "Project") in Boston, Massachusetts. The Project consists of the acquisition of a parcel of land (the "Project Area") in Boston containing approximately 1.56 acres and bounded by Congress, Franklin, Pearl and Milk Streets, the demolition of the public parking garage now located thereon and the construction in the Project Area of a new underground parking garage and grade level park. The Report and Decision was approved by the Mayor on October 4, 1984, and was filed with the Clerk of the City on _____, 1985;

WHEREAS, the City and the Authority have determined that the construction of the Project, consisting as it does of an underground parking garage and grade level park and the payment of substantial revenues to the City, as more fully described in the Chapter 121A application for the Project (the "Application") dated November 14, 1983, is in the best interests of the City and the public good and welfare;

WHEREAS, in view of the public nature of such improvements and the importance of such revenues to the City, the parties desire to provide opportunities for continued oversight by the City and the Authority of certain aspects of the Project, including the financing, operation, design, maintenance and orderly development of the Project;

WHEREAS, the Corporation and the City, recognizing that the parking spaces in the garage structure currently located in the Project Area will be unavailable during the construction of the Project, have agreed to work together to determine the effect of the unavailability of such spaces and whether means are available which would mitigate any adverse effect of the same;

WHEREAS, the parties desire to set out their understanding as to the use of the park portion of the Project by the public; and

WHEREAS, the City, the Authority and the Corporation are entering into this Agreement in reliance upon the performance of their various obligations hereunder,

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEVELOPMENT OF THE PROJECT

Section 1.1 Acquisition of the Project Area. The Corporation shall exercise due diligence and best efforts in an attempt to acquire the Project Area, provided that nothing contained in this Agreement shall be deemed to require the Corporation (i) to initiate or prosecute an eminent domain taking pursuant to Chapter 80A of the General Laws during any period of diligent and active negotiations with any owner of any interest in the Project Area (including, without limitation, the City), or (ii) to compromise or reach a settlement with any such owner, or otherwise compromise its position in any way, in order to expedite the acquisition of the Project Area, or (iii) to acquire the Project Area if the total compensation award established by the court in any eminent domain proceedings conducted pursuant to said Chapter 80A is, in the sole discretion of the Corporation, too high to enable the Project to proceed as proposed.

Section 1.2 Commencement of Construction. After it acquires the Project Area, the Corporation shall exercise due diligence and best efforts in proceeding to cause demolition of the existing garage located in the Project Area. In any

event, the Corporation shall cause such demolition to commence not later than the date which is the later of (i) eighteen (18) months after the date of execution of this Agreement, or (ii) twelve (12) months after the Acquisition Date (as defined in Section 1.7). After such demolition, the Corporation shall exercise due diligence and best efforts in an attempt to develop the Project in accordance with the terms of the Application, the Report and Decision, and this Agreement, as any of the same may be amended, and to cause construction of the Project to commence and proceed in accordance with the Development Schedule attached hereto as Exhibit A.

Section 1.3 Failure to Proceed. If the Corporation fails to cause demolition of the existing garage to commence within the time period specified therefor in the second sentence of Section 1.2 hereof, then the City and the Authority may elect, by written notice to the Corporation, to rescind their approvals of the Project, in which event any and all right of the Corporation to proceed with the Project shall terminate immediately.

If at any time the City determines that the Corporation has failed to proceed with due diligence and best efforts in accordance with the provisions of Section 1.1, the first sentence of Section 1.2, or the third sentence of Section 1.2, the City may notify the Corporation in writing of such failure. Within thirty (30) days of receipt of such notice,

the Corporation will report to the City in writing on the status of the Project. If the City reasonably determines on the basis of such report and any other information available to the City (and made available to the Corporation with the City's notice) that the Corporation is not proceeding with due diligence and best efforts in accordance with its obligations under said Sections, it shall so notify the Corporation in writing and shall set forth in such notice any action that the City reasonably believes is required to be taken for the Corporation to fulfill such obligations. If the Corporation fails to take such action within ninety (90) days from the date of such notice, and such action was reasonably capable of being taken by the Corporation within such ninety (90) day period, the City, at its election, may extend the date for performance of any obligation hereunder by the Corporation for such additional time as it in its sole discretion determines, or may rescind its approval of the Project, in which event any and all right of the Corporation to proceed with the Project shall terminate immediately.

If at any time the Corporation has unsuccessfully exhausted all of its available legal rights to acquire the Project Area by eminent domain pursuant to Chapter 80A of the General Laws and to appeal the outcome of any proceeding conducted thereunder, the City may notify the Corporation of its intention to rescind its approval of the Project and terminate the Corporation's right to proceed with the Project. Such rescission and termination shall become

effective sixty (60) days from the date of the City's notice, unless the Corporation has notified the City within such sixty (60) day period that it desires a one (1) year extension within which to acquire the Project Area, in which case the rights of the Corporation hereunder shall be extended for such one (1) year period, provided that the Corporation agrees to exercise due diligence and best efforts during such one (1) year period to acquire the Project Area and sets forth in such notice the actions necessary to acquire the Project Area.

Section 1.4. Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, the times and periods for performance by the Corporation contained in this Agreement, except the time for performance set forth in Section 1.6 hereof, shall be extended by the period of actual delay caused by the failure of the City or the Authority to perform its obligations hereunder, or by reason of unforeseen scarcity of material or labor, strikes or similar labor disputes, damage by fire or other casualty or any other unforeseen cause beyond the reasonable control of the Corporation, provided that notice of any such delay is given by the Corporation to the City within thirty (30) days of the discovery by the Corporation of the event causing any such delay. If notice of such delay is given more than thirty (30) days after such discovery, the times and periods for performance shall be extended by such portion of the period of delay as occurs after the date of such notice.

Section 1.5 Rights of Mortgagee. If at any time during the term of this Agreement the City or the Authority intends to exercise any right to terminate any approval of the Project because of any action or inaction of the Corporation which would constitute a default hereunder, it shall first give notice of such default and its intention to terminate such approval, to any mortgagee of all or any portion of the Project or the Project Area of which it has notice, and afford such mortgagee a reasonable opportunity to cure the Corporation's default. The aforesaid rights of a mortgagee of the Project Area shall not apply to the City's option to rescind and terminate its approvals pursuant to Section 1.6 hereof.

Section 1.6 City's Option to Rescind and Terminate. Notwithstanding anything to the contrary contained in this Article I, and whether or not the Corporation has exercised due diligence and best efforts, if the Acquisition Date has not occurred by September 15, 1991, the City may, by written notice to the Corporation, rescind its approval of the Project and terminate the Corporation's right to proceed with the Project, or may extend such date for such additional time as it in its sole discretion determines.

Section 1.7 Acquisition Date. For purposes hereof, the "Acquisition Date" shall mean the date on which the Corporation shall have acquired fee simple title to the Project Area, subject only to the Report and Decision, this

Agreement, and all other agreements between the Corporation, on the one hand, and the City and the Authority, or either of them, on the other hand, relating to the Project or the Project Area. If the Project Area is acquired by the exercise of the power of eminent domain pursuant to the provisions of G.L.c. 80A, the Corporation shall be deemed to have acquired the Project Area after final judgement of condemnation has been entered.

ARTICLE II

DESIGN

Section 2.1 Program Development. Within sixty (60) days after the date of this Agreement, the Corporation shall establish a committee (the "Program Development Committee"). The size and membership of the Program Development Committee shall be subject to the prior approval of the Authority, which approval shall not unreasonably be withheld. The Program Development Committee will study the site, urban parks in general and parking garages to determine the program elements of a successful open space and underground parking garage on the Project Area. Not later than the date which is sixty (60) days after the Acquisition Date, the Program Development Committee will submit to the Corporation a report (the "Program Report") outlining its conclusions, and upon approval of such report by the Corporation, the Program Report will be submitted to the Authority for approval. Within thirty (30) days after receipt of a draft Program

Report, the Authority will either approve such report or notify the Corporation in writing of its disapproval of such report, and the reasons for such disapproval. Upon any such disapproval, the Corporation and the Program Development Committee shall revise the Program Report and resubmit such report to the Authority for approval as aforesaid. Any failure of the Authority to approve or disapprove any Program Report in writing within thirty (30) days after receipt thereof, shall be deemed an approval of such report. The Corporation will provide funds to the Program Development Committee sufficient to perform its study and prepare its report, and such funds shall be considered costs of the Project.

Section 2.2. Designer Selection. Upon receipt of an approved Program Report, the Corporation will prepare a design competition kit, which shall include the Program Report. At a time chosen by the Corporation, the Corporation shall select not fewer than three (3) potential design teams and submit such kit to such teams. Each design team will be asked to prepare a design proposal within three (3) months, which proposal shall become the property of the Corporation upon submission. The Corporation will pay each team submitting such a design proposal a stipend in an amount to be determined by the Corporation.

Prior to the expiration of such three (3) month period, the Corporation shall establish a committee (the "Design Review Committee"), the composition of which will be similar

to that of the Program Development Committee and subject to the prior approval of the Authority, which approval shall not unreasonably be withheld. The Design Review Committee will review the design proposals submitted, and will submit to the Corporation a report outlining the strengths and weaknesses of each proposal, but will not rank the proposals. After receipt of such report, the Corporation will review the proposals and the report, will submit the proposals to the Authority for its review and comments, will take such other action as it deems necessary to evaluate the proposals, and will then select a design team. After selection of the design team by the Corporation, the Corporation will request the Authority's approval of the design team. Such approval will be deemed given if the Authority fails to approve or disapprove the design team within thirty (30) days after the date of such request. Any disapproval of the design team will be in writing and accompanied by a statement setting forth the reasons therefor. Upon selection by the Corporation, and approval by the Authority, the design team will be asked to create a public forum to elicit reaction to the selected proposal, and to prepare any necessary revisions to the design and submit a preliminary final design for design review.

Section 2.3. Design Review. After receipt of a preliminary final design, the Design Review Committee will review and comment upon the design, and such design will be

submitted to the Corporation for approval. Upon approval by the Corporation, the preliminary final design will be submitted to the Authority for its review and approval. The submission to the Authority, and the Authority's review of the preliminary final design, shall be conducted in accordance with the Authority's standard design review procedures, to the extent that such procedures are not inconsistent with the provisions of this Agreement and any other agreement relating to the Project. The Authority may streamline such process or waive such procedures in its discretion, in order to advance the construction of the Project.

ARTICLE III

TEMPORARY TRANSPORTATION MANAGEMENT PROGRAM

Section 3.1 Report. Not later than ninety (90) days prior to demolition of the parking facility presently located on the Project Area, the Corporation shall submit a written transportation management plan to the City that shall set forth the number of parkers that is expected to be affected by the unavailability of such facility during construction of the Project, and a plan for accomodating the transportation needs of such parkers, which may include the provision of temporary replacement parking in areas outside of the downtown business district, the increased use of car and van

pooling, public transportation, other underutilized lots and garages in or near the downtown business district, and similar measures. Such plan shall include a budget and implementation schedule.

The Corporation's report may identify possible sites for temporary replacement parking, which may include sites which are owned or controlled by the City. Such replacement parking may consist of a site or sites at some distance from the Post Office Square area, provided that shuttle bus service is provided between the replacement parking and Post Office Square. The plan shall include an analysis of the traffic impacts and costs of each alternative considered therein. Sites for temporary replacement parking or sites otherwise proposed for parking as a part of the plan shall be reviewed with affected community groups. The final selection of any temporary replacement parking site by the Corporation shall be subject to the approval of the City.

Section 3.2 Implementation of Program of Alternatives. The City shall review the transportation management plan submitted by the Corporation pursuant to Section 3.1 hereof, and any other alternatives it considers appropriate, and within thirty (30) days after receipt of such plan the City shall determine the adequacy of the proposed program. Upon approval by the City of the proposed program, the Corporation shall exercise its best efforts to implement all elements of the program.

The price structure of any temporary replacement parking provided by or on behalf of the Corporation pursuant to the transportation management plan shall not exceed the greater of (i) the market rate for comparable parking or, (ii) such amount as may be necessary to adequately cover the costs associated with obtaining, operating, and maintaining such a facility. Such price structure shall be revised as necessary from time to time to prevent the accumulation of any material losses.

If at any time after the date which is ninety (90) days after the opening of any temporary replacement parking facility, such facility is producing insufficient revenues to cover operating costs, the Corporation may request the City's approval to move or close the facility or may request that the City increase or decrease the number of spaces required to be provided in such facility. The City shall not unreasonably withhold or delay its approval to any such request.

Not later than the date which is ninety (90) days prior to completion of the garage portion of the Project, the Corporation shall give written notice to the City setting forth its plans for any such replacement parking facility. After completion of the garage portion of the Project the Corporation or any affiliate thereof or any successor in interest thereto may operate the replacement parking facility without regard to the price restrictions contained herein, provided that if such continued operation of the facility is

conducted by the Corporation or any affiliate thereof or successor thereto, the City shall have the right to require such facility to be closed at any time upon two (2) months prior notice to the Corporation or such affiliate.

Nothwithstanding anything to the contrary contained herein, the Corporation's obligations hereunder shall be subject to its acquisition of the Project Area. The Corporation's obligations hereunder shall include using its best efforts to obtain, at its expense, all permits and approvals required in connection with the operation (or continued operation) of any temporary replacement parking facility and shuttle bus service provided pursuant to this Article III, including any approval of the City of Boston Air Pollution Control Commission. The granting of any temporary permit therefor shall not relieve the Corporation of its obligation with respect to any permit required for continued operation.

ARTICLE IV

PROJECT FINANCING

Section 4.1 Development of the Financing Plan. The Corporation and the City agree that the preparation and implementation of the financing plan for the Project shall be a cooperative process, and the Corporation agrees to keep the City informed on a regular basis of all material developments with respect to the financing for the Project. The Corporation shall (i) provide the City promptly upon the

City's request with copies of any materials, papers, drafts or other documents relating to the financing of the Project, (ii) provide the City with the opportunity to attend and participate in all meetings relating solely or in large part to the financing for the Project, including, without limitation, all planning and structuring meetings held among the Corporation, its representatives, underwriters, lawyers and others involved in financing of the Project, and (iii) consult with the City on all material aspects of such financing prior to seeking the City's approval thereof pursuant to this Article IV or the Report and Decision. Nothing in the preceding sentence shall entitle the City to attend or participate in meetings of the board of directors of the Corporation or to participate in any meeting, or obtain copies of any materials, which the Corporation may reasonably determine is of a confidential nature.

If the City has not elected to do so prior thereto, at such time as the Corporation notifies the City that it is prepared to proceed with the arranging of financing for the Project, the City may deliver to the Corporation a detailed summary of the City's assumptions and requirements relating to the financing for the Project. Except as otherwise approved by the City, the final Financing Plan for the Project shall be consistent with the assumptions and requirements contained in such summary.

Section 4.2 Approval of the Financing Plan. Not later than the date which is the later of: (i) ninety (90) days after the Acquisition Date, or (ii) ninety (90) days prior to demolition of the existing garage, and prior to entering into any commitment for construction or permanent financing for the Project, the Corporation shall submit to the City for its approval a proposed financing plan which shall include a complete Project pro forma operating statement (the "Financing Plan") for the construction and operation of the Project. The Financing Plan shall be a detailed written summary of the proposed financing, and shall include all documents relating to the financing and such background materials as the Corporation deems necessary or the City may reasonably request to enable the City to evaluate the Financing Plan. Within thirty (30) days after the submission of any proposed or amended Financing Plan by the Corporation, the City shall notify the Corporation of its approval or disapproval of the Financing Plan or any part thereof, and any disapproval shall be accompanied by a written statement of the reasons for such disapproval and the City's proposed modifications to the Financing Plan necessary to make the plan acceptable to the City. The City shall exercise good faith in its review and in its approval or disapproval of the Financing Plan or any part thereof, but nothing herein shall affect the City's right to disapprove the Financing Plan for any reason related to such plan. Upon receipt of any such notice of disapproval, the Corporation shall prepare and

submit to the City for approval an amended Financing Plan. Any failure of the City to approve or disapprove any proposed or amended Financing Plan in writing within thirty (30) days after submission thereof by the Corporation shall be deemed to be an approval of such Financing Plan.

Section 4.3 Amendments to the Financing Plan. Upon approval of the Financing Plan by the City, the Corporation will use its best efforts to cause the Project to be financed in accordance with the Financing Plan, and, except as provided below, shall not obtain construction or permanent financing for the Project otherwise than in accordance with the Financing Plan. Notwithstanding the foregoing, the Corporation may make such modifications to the Financing Plan as may be necessary or desirable for the success of the Project, if such modifications would not result in a material reduction in the anticipated return to the City from the Project. Any proposed modification which would result in such a material reduction will be deemed an amendment of the Financing Plan, and must be submitted to the City for approval in the same manner as the original submission of the Financing Plan provided for in Section 4.2 hereof.

Section 4.4 Financing Documents. From time to time prior to the closing of any financing contemplated under the approved Financing Plan, the Corporation shall submit to the City drafts of the primary documents to be executed and

delivered in connection with such closing (such as any Loan Agreement, Mortgage or Offering Materials, but not including secondary documents which do not alter the basic terms of the financing), for its approval as to the Corporation's compliance with the requirements of this Article IV. The City shall, within ten (10) days of receipt of such drafts, approve or disapprove such drafts by notifying the Corporation in writing. Any failure to so notify the Corporation within such ten-day period will be deemed an approval of such drafts.

At the Corporation's option, it may deliver to the City with such drafts a brief summary of the provisions contained therein, together with a certification of the Corporation that the drafts are consistent with the Financing Plan, or the extent to which the drafts are inconsistent with the Financing Plan. In the event that the Corporation delivers such a summary and certification, the period within which the City must approve or disapprove the drafts shall be forty-eight hours, and any failure of the City to notify the Corporation of its approval or disapproval of the drafts within such period will be deemed an approval.

Any notice of disapproval given by the City pursuant to this Section 4.4 shall be accompanied by a statement setting forth the reasons therefor. Any approval given hereunder, whether by notice or by expiration of the applicable time period, shall conclusively establish that if such drafts are executed and delivered at such closing without

changes thereto which adversely affect the City, the requirements of this Article IV shall have been fully satisfied.

Section 4.5 Certain Profits of the Corporation. From the date hereof until completion of construction of the Project, in the event that the Corporation or any affiliate thereof receives revenues from activities conducted on the Project Area or in connection with the Project in excess of expenses associated with such revenues and any taxes or similar charges payable with respect to such revenues, such excess shall be applied towards costs of the Project or paid to the City, as the City may require in the Financing Plan.

Section 4.6 Certain Definitions. The terms financing and Financing Plan as used herein shall mean and include acquisition, construction, interim, permanent, long-term and any other financing obtained by the Corporation or secured by the Project or the Project Area, whether such financing is arranged at one time or different times.

ARTICLE V

GARAGE REVENUES

Section 5.1 Revenue Projections. Not later than the date which is ninety (90) days prior to the date on which the garage portion of the Project is opened for business, the Corporation shall prepare a projection of gross revenues from garage operations (a "Revenue Projection") for each of the

first four (4) Operating Years (as hereinafter defined). In each year beginning with the first Operating Year, the Corporation will submit to the City, not later than ninety (90) days prior to the start to the next Operating Year, a Revenue Projection for the fourth Operating Year next following. Within thirty (30) days of receipt of the first Revenue Projection and each subsequent Revenue Projection, the City will notify the Corporation that it has approved such Revenue Projection, or that it objects to such Revenue Projection, and the reasons for such objection. Within thirty (30) days of receipt of any such objection, the Corporation will prepare a revised Revenue Projection, taking into account, to the extent it deems appropriate, the objections raised by the City, and will re-submit such Revenue Projection to the City for approval. If the City objects to any such revised Revenue Projection, the parties shall promptly participate in arbitration to determine the appropriate Revenue Projection for such year. Any failure of the City or the Corporation to act within the aforesaid thirty (30) day periods shall be deemed an approval of the proposed Revenue Projection (in the case of such a failure by the City) or consent to the City's proposed changes to such Revenue Projection (in the case of such a failure by the Corporation).

Section 5.2 Failure to Achieve Projected Revenues. If for any two (2) consecutive Operating Years during the term of this Agreement (or for any one (1) Operating Year during the last four (4) Operating Years of the term of this Agreement), there is a Revenue Shortfall (as hereinafter defined), the City shall have the option of establishing the parking rate structure for the garage for the next Operating Year, provided that such rate structure shall not exceed the market rate for parking in comparable garages open to the public in downtown Boston. Any dispute between the City and the Corporation concerning whether such rate structure exceeds such market rate shall be decided by arbitration. If in any subsequent year a Revenue Shortfall does not occur, the City shall not have the option to establish the rate structure for the following years until the next occurrence which would trigger the operation of this section.

Notwithstanding the foregoing, if at any time during the term of this Agreement (except during the first year of garage operations) the parking rates for the garage are less than ninety percent (90%) of the market rate for parking in comparable garages open to the public in downtown Boston, the City shall have the right to cause the Corporation to raise such rates to the level which would maximize garage revenues. The City's right shall be exercised by giving written notice to the Corporation, whereupon the Corporation shall, within thirty (30) days from receipt of such notice, raise such rates to such level. Any dispute between the City and the

Corporation as to the market rate for parking in comparable garages open to the public in downtown Boston or the rate which would maximize garage revenues shall be resolved by arbitration, and the Corporation shall be free to set such parking rates pending the outcome of such arbitration proceedings.

Section 5.3 "Revenue Shortfall" defined. During any of the first four (4) Operating Years, a Revenue Shortfall shall occur if actual revenues received by the Corporation for such year are less than ninety-one percent (91%) of the Revenue Projection for such year. In any subsequent Operating Year, a Revenue Shortfall shall occur if actual revenues for such year are less than ninety-five percent (95%) of the Revenue Projection for such year.

Section 5.4 Arbitration. Any arbitration proceedings conducted pursuant to the provisions of this Article V shall be conducted in Boston pursuant to the rules of the American Arbitration Association and shall be limited in scope to (i) whether the Revenue Projection for a particular year is consistent with the standard set forth in the sentence immediately following, or (ii) a determination of the market rate for parking in comparable garages open to the public in downtown Boston or the parking rate which would maximize garage revenues, as the case may be, and the outcome of such proceedings shall be conclusive and binding upon the parties hereto. In any arbitration proceedings concerning the

Corporation's Revenue Projections, such Revenue Projections shall be upheld as appropriate unless the parking rate structure proposed by the Corporation is below the market rate for parking in comparable garages open to the public in downtown Boston, or the Corporation's projections of occupancy rates and the like are unreasonable. The cost of such arbitration proceedings shall be shared equally by the parties.

Section 5.5 "Operating Year" defined. For purposes hereof, an Operating Year shall be a calendar year or such other fiscal year as the Corporation may, with the approval of the City, adopt. The City agrees that such approval will not unreasonably be withheld, delayed, or conditioned. The first Operating Year shall begin on the first day of the calendar year (or other fiscal year, as aforesaid) following the date on which the garage portion of the Project opens for business, and any partial year prior to such first Operating Year shall not be considered an Operating Year for purposes hereof.

ARTICLE VI

GARAGE EXPENSES AND RESERVES

Section 6.1 Projections of Expenses and Reserves. Not later than the date which is ninety (90) days prior to the date on which the garage portion of the Project is opened for business, the Corporation shall prepare a projection (an "Expense Projection") of total Operating Expenses (as

hereinafter defined) and, subject to Section 6.4, amounts to be added to operating and maintenance reserve accounts ("Reserves") for each of the first four (4) Operating Years. An Expense Projection shall contain a breakdown of Proposed Operating Expenses and Reserves into general categories, and shall state the same as dollar amounts. In each year beginning with the first Operating Year, the Corporation will submit to the City, not later than ninety (90) days prior to the start to the next Operating Year, an Expense Projection for the fourth Operating Year next following. Within thirty (30) days of receipt of any such Expense Projection, the City will notify the Corporation that it has approved such Expense Projection, or that it objects to such Expense Projection, and the reasons for such objection. Within thirty (30) days of receipt of any such objection, the Corporation will prepare a revised Expense Projection, taking into account, to the extent it deems appropriate, the objections raised by the City, and will re-submit such Expense Projection to the City for approval. If the City objects to any such revised Expense Projection, the parties shall promptly participate in arbitration to determine whether the Expense Projection for such year is consistent with the second sentence of Section 6.5 hereof. Any failure of the City or the Corporation to act within the aforesaid thirty (30) day periods shall be deemed an approval of the proposed Expense Projection (in the

case of such a failure by the City) or consent to the City's proposed changes to such Expense Projection (in the case of such a failure by the Corporation).

Section 6.2 Excess Expenditures. If for any two (2) consecutive Operating Years during the term of this Agreement (or any one (1) Operating Year during the last four (4) Operating Years of this Agreement), there are Excess Expenditures (as hereinafter defined), the City shall have the option of reviewing and approving the Corporation's operating budget for the Operating Year in which such Excess Expenditures are reported to the City (the "Budget Year"). If the City notifies the Corporation of its intention to exercise such option, the Corporation shall prepare and deliver to the City a proposed budget, prepared on a line-item basis, outlining its anticipated Operating Expenses for the Budget Year. Within thirty (30) days of receipt of any such budget, the City will notify the Corporation that it has approved such proposed budget, or that it objects to one or more items contained in such proposed budget, and the reasons for such objection. Upon receipt of any such objection, the Corporation will prepare a revised budget, taking into account, to the extent it deems appropriate, the objections raised by the City, and will re-submit such budget for approval. If the City and the Corporation agree on the total amount of Operating Expenses provided for in such budget, the Corporation agrees that its actual expenditures for Operating

Expenses in the Budget Year shall not exceed the total Operating Expenses permitted by such budget. If the Corporation and the City fail to come to an agreement on the total amount of Operating Expenses to be provided for in such budget, the parties shall participate in arbitration to determine whether such amount proposed by the Corporation is consistent with the second sentence of Section 6.5 hereof.

Notwithstanding the foregoing, if during any Operating Year (except the first Operating Year) the actual Operating Expenses are more than one hundred ten percent (110%) of the Operating Costs of comparable garages referred to in Section 6.3 hereof, the City shall have the right to review and approve the Corporation's operating budget for the next Operating Year. The City's right shall be exercised by giving written notice to the Corporation, whereupon the Corporation shall prepare a budget and deliver the same to the City for its approval as provided in the preceding paragraph. Any dispute arising under this paragraph shall be submitted to arbitration.

Section 6.3 "Excess Expenditure" defined. During any of the first four (4) Operating Years, an Excess Expenditure shall occur if: (i) the actual Operating Expenses for such year exceed the total Operating Expenses budgeted for such year by more than nine percent (9%), and (ii) such actual Operating Expenses are in excess of those incurred by

comparable garages located in downtown Boston. The parties recognize that there may not be such a comparable parking garage, in which case similar well-maintained garages operated in downtown Boston to serve primarily office or commercial, as distinguished from residential, uses, will be used as a point of reference in establishing a "comparable garage" for purposes of this Section 6.3 and other sections of this Agreement, and adjustments will be made to reflect the twenty-four hour operation of the garage, the fact that it will be operated separately from any other structure, its underground location, and any other characteristic which may distinguish the garage from such "similar" garages. In any subsequent Operating Year, an Excess Expenditure shall occur if: (i) the actual Operating Expenses for such year exceed the total Operating Expenses budgeted for such year by more than five percent (5%), and (ii) such actual Operating Expenses are in excess of those incurred by such comparable garages. Any dispute as to the Operating Expenses incurred by such comparable garages shall be submitted to arbitration as provided in Section 6.5 hereof.

Section 6.4 Reserves. The Corporation agrees that it shall not add to the operating and maintenance reserve accounts for the Project in any Operating Year any amount in excess of the amount budgeted for Reserves in the Expense Projection for such Operating Year and it shall not add to any such account in any Operating Year if the sum of the balances in all such reserve accounts exceeds an amount equal

to twenty percent (20%) of the total costs of constructing the Project (such amount to be increased from time to time by percentage increases in an index reasonably reflecting construction cost increases after the construction of the Project.) The Corporation may expend from such reserve accounts such sums as it deems appropriate for the operation, maintenance and repair of the garage portion of the Project, provided that the Corporation shall not make any expenditure from such reserves accounts without the prior approval of the City, (x) which would involve material structural alterations or material design changes to the garage portion of the Project, or (y) which would require any refinancing, or (z) in the last four (4) Operating Years of this Agreement, unless such expenditure is necessary to maintain the garage in a safe operating condition.

Section 6.5 Arbitration. Any arbitration proceedings conducted pursuant to the provisions of this Article VI shall be conducted in Boston pursuant to the rules of the American Arbitration Association and shall be limited in scope to (i) whether the total amount of Operating Expenses proposed by the Corporation for a particular year is consistent with the standards set forth in the sentence immediately following, or (ii) the amount of Operating Expenses incurred by "comparable garages" described in Section 6.3 hereof, and the outcome of such proceedings shall be conclusive and binding upon the parties hereto. In any such arbitration proceedings, the

Corporation's Expense Projections or budget shall be upheld as appropriate unless such Expense Projection or budget is excessive when compared to "comparable garages" described in Section 6.3 hereof. The cost of such arbitration proceedings shall be shared equally by the parties.

Section 6.6 "Operating Expenses" defined. For purposes hereof, Operating Expenses shall be all costs and expenses incurred in connection with the operation, maintenance and repair of the Project which are not paid out of a reserve account, including, without limitation, all costs for labor and benefits, materials, services, utilities, insurance, all federal, state and local charges, assessments, levies or similar impositions or impositions in lieu thereof, permits and licensing fees, and amounts expended for the purpose of complying with the Corporation's obligations hereunder, under a ground lease of the subsurface portion of the Project area, under a management contract for the operation of the garage, or under other documents imposing obligations on the Corporation relative to all or any part of the Project, but shall not include any amount paid pursuant to G.L.c. 121A, §10, or pursuant to a contract under G.L.c. 121A, §6A, or any amount which constitutes real estate taxes, rent or debt service.

ARTICLE VII

REPORTS AND AUDIT

Section 7.1 Reports and Audit. Within one hundred twenty (120) days after the end of each Operating Year, the Corporation shall furnish to the City true, correct, complete and certified financial statements setting forth the amount of revenues received by the Corporation for the immediately preceeding Operating Year, and the amount of Operating Expenses and Reserves paid or applied for such year. Such statement shall be prepared in conformity with the provisions hereof by a nationally recognized accounting firm selected by the Corporation. The City shall have the right to conduct an independent audit of the Corporation's records regarding the operation of the garage portion of the Project, to ascertain the accuracy of any such financial statement submitted by the Corporation. This independent audit may be conducted at any time within eleven (11) months of the end of any Operating Year, and shall be conducted by by a nationally recognized accounting firm of the City's choice. In the event the amount of Revenues, Operating Expenses or Reserves shown on such independent audit shall vary by more than five percent (5%) that shown in any such financial statement submitted by the Corporation, the Corporation shall pay the total cost of such audit, and otherwise the cost of such audit shall be borne by the City.

ARTICLE VIII

MAINTENANCE, OPERATION, AND PUBLIC ACCESS

Section 8.1. Maintenance and Operation. The Corporation shall, at all times during the term of this Agreement, keep the Project in good and safe condition and repair, and in the occupancy, maintenance and operation of the Project, shall comply with all laws, ordinances, codes and regulations applicable thereto. Not less than ninety percent (90%) of the parking spaces in the garage shall be public spaces.

Section 8.2. Garage: Twenty-Four Hour Operation. The garage portion of the Project shall be open for public parking on a twenty-four hour basis, provided that the Corporation, if it deems it advisable, may close portions of the garage (including means of access to the garage) during off-peak periods. The security measures adopted by the Corporation shall take into account such twenty-four hour operation.

Section 8.3. Open Space: Public Access. Except as otherwise provided in this Section 8.3, the open space portion of the Project (the "Open Space") shall be open to the public on a twenty-four hour basis every day of the year. The Corporation will regulate vendors and performing artists using the Open Space in accordance with a program to be approved by the City prior to completion of construction of the Open Space. The Corporation shall have the right to

temporarily close portions of the Open Space at any time for reasons of safety, security or maintenance, and may, with the prior approval of the City, close off portions of the Open Space dedicated to or used in connection with programming activities. The Corporation may also close off the garage entrances located in the Open Space and areas immediately adjacent thereto.

Section 8.4. Open Space: Name. The Corporation agrees that the City shall have the exclusive right to designate a name for the Open Space, provided that the City shall give notice of its intention to designate a name for the Open Space to the Corporation not less than thirty (30) days prior to any official announcement of such intention.

ARTICLE IX

CITY'S OBLIGATIONS

Section 9.1. Cooperation. The City and the Authority agree to fully cooperate with the Corporation in reviewing the Corporation's requests for approvals required for the Project (including, without limitation, approvals required under this Agreement and approval of a new or amended commercial area revitalization district plan to include the Project Area in such a district), and to fully cooperate with and undertake all reasonable actions to insure the success of

the Corporation's efforts to obtain approvals from the City, the Authority, and departments or agencies of the City; provided, however that a good faith disapproval by the City pursuant to the terms of this Agreement shall not be deemed such a failure to cooperate. The Corporation's obligations hereunder shall be conditioned on obtaining approvals of all licenses and permits required for the construction and use of the Project (including permits required for the implementation of any measures described in Article III hereof).

ARTICLE X

REIMBURSEMENT FOR CERTAIN COSTS

Section 10.1. City's Professional Costs. The Corporation agrees to cause to be paid the City's costs for outside legal and financial professionals for services rendered to the City in connection with its review of the Project, and other professional and out-of-pocket costs related to the Project, up to a maximum of sixty thousand dollars ($60,000.00). Such payment will be made as follows:

(a) twenty thousand dollars ($20,000.00) shall be paid within thirty (30) days after the execution of a contract with the City relative to the Project pursuant to the provisions of G.L.c.121A, §6A, and

(b) forty thousand dollars ($40,000.00) shall be paid if and when the construction financing for the Project (which shall not be deemed to include any interim financing which is limited to acquisition, demolition, design and related costs) is in place.

Section 10.2. Certain Litigation. In the event of any legal, arbitration (other than arbitration pursuant to Articles V or VI hereof), or similar proceeding brought by any party hereto to enforce any provision of this Agreement or any other agreement relative to the Project and executed by the Corporation, Friends of Post Office Square, Inc., and an affiliated entity, or any one or more of them, on the one hand, and the City and the Authority, or either of them, on the other hand, the reasonable attorneys fees, court costs, and related expenses incurred by such party shall be paid for by the party or parties against whom such enforcement is obtained.

In the event of any legal or similar proceedings brought by the present lessee of the Project Area against the City or the Authority, or any action brought by the Corporation or any affiliate thereof against such lessee to which the City or the Authority is or becomes a party, the Corporation agrees to cause to be paid the City's reasonable costs for outside legal counsel for representation of the City or the Authority in such action, and any amount paid by the City to such lessee which constitutes attorneys fees awarded to such

lessee by any court pursuant to any such action. Such amounts shall be paid at the closing of construction financing for the Project (which shall not be deemed to include any interim financing which is limited to acquisition, demolition, design and related costs), or, if the Project does not go forward, such amounts shall be paid on the earlier of the date on which the Corporation's right to proceed with the Project is terminated pursuant to this Agreement or the date on which the Corporation abandons the Project.

Notwithstanding the foregoing, it is expressly understood that any mortgagee of all or a portion of the Project or the Project Area, or any party claiming by, through or under any such mortgagee, shall not be liable to the City or the Authority for costs which shall have accrued against the Corporation.

ARTICLE XI

MISCELLANEOUS

Section 11.1. Approvals and Notices. Where provisions of this Agreement require that notices, consents, approvals, determinations, and the like (collectively, an "approval") are required to be given to the City or the Authority or received from the City or the Authority hereunder, such approval shall be conclusively deemed to be a final approval

by the Authority or the City with respect to the particular document or proposed action for which such approval was given, if:

(a) in the case of the Authority, if given to or received from the Director of the Authority;

(b) in the case of the City, if given to or received from the Mayor, or any staff member designated by the Mayor to receive or give such approval, or, if the Mayor designates the Authority to give or receive such approval, if given to or received from the Director. Written notice of any such designation by the Mayor shall be given to the Corporation, and any such designation may be revoked by like notice.

Notwithstanding the foregoing, any notice of termination of the City's or the Authority's approvals of the Project or of the Corporation's rights to proceed with the Project shall require the approval of the Board of Directors of the Authority and the Mayor.

Notices shall be deemed given when hand delivered or deposited in the United States mail and sent registered or certified mail, postage prepaid, return receipt requested, to the respective parties at their addresses given below, or to such other address as any party may designate by similar notice to the others:

the Corporation:	Post Office Square Redevelopment Corporation c/o Friends of Post Office Square, Inc. One Post Office Square Boston, Massachusetts 02110
with a copy to:	James B. White, Esquire Palmer & Dodge One Beacon Street Boston, Massachusetts 02108
the City:	Mayor City of Boston City Hall Boston, Massachusetts 02201
the Authority:	Boston Redevelopment Authority City Hall Boston, Massachusetts 02201 Attention: Director

All notices and approvals sent to the City or the Authority shall be sent to both of them. Any requests for approvals made by the Corporation to the City or the Authority where such approvals shall be deemed granted after a period of non-reply by the City or the Authority shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters:

"NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY. FAILURE TO RESPOND WITHIN ____ DAYS SHALL RESULT IN AUTOMATIC APPROVAL."

Section 11.2. Obligations of the Corporation. Subject to the provisions of applicable law, the obligations of the Corporation hereunder may, by notice to the City and the Authority, be delegated to and assumed by any entity controlled by or affiliated with the Corporation, or to any

other person or entity pursuant to a binding contract or lease under which such obligations are expressly delegated and assumed.

Section 11.3. No Personal Liability. The persons acting from time to time on behalf of the City, the Authority, the Corporation or any entity affiliated with or controlled by the Corporation shall not have any personal liability hereunder.

Section 11.4. Invalid Provisions. If any provisions of this Agreement are held to be invalid, the remainder of this Agreement shall not be affected thereby, if such remainder would then conform to the requirements of applicable laws.

Section 11.5. Status Reports. Recognizing that the parties may find it necessary to establish to each other and to third parties the then current status of performance hereunder, either party, on the written request of the other made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Agreement.

Section 11.6. Stock of the Corporation. Reference is made to Section 7 of Chapter 121A, which requires that the stock of a Chapter 121A corporation be offered to the owners of the real estate within the location of the project. The

City acknowledges that the Corporation has offered to the City the right to subscribe to the stock of the Corporation, but the City, having determined that it is not in the best interests of the City or the Project for the City to own such stock, has notified the Corporation that it declines such offer.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement in five counterparts to be signed, sealed and delivered by their duly authorized officers or representatives.

APPROVED AS TO FORM:

_____

WITNESS:

_____

_____

CITY OF BOSTON

By_____
Mayor

BOSTON REDEVELOPMENT AUTHORITY

By_____
Director

POST OFFICE SQUARE
REDEVELOPMENT CORPORATION

By_____
President

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss: _____, 1985

Then personally appeared the Honorable Raymond L. Flynn, Mayor of Boston, who executed the foregoing on behalf of the City of Boston and acknowledged the same to be the free act and deed of said City, before me.

_____
Notary Public
My Commission expires:

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss: _____, 1985

Then personally appeared Stephen Coyle, Director of the Boston Redevelopment Authority, who executed the foregoing on behalf of the Boston Redevelopment Authority and acknowledged the same to be the free act and deed of said Authority, before me.

_____
Notary Public
My Commission expires:

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss: _____, 1985

Then personally appeared Robert W. Weinberg, President of Post Office Square Redevelopment Corporation, who executed the foregoing on behalf of the said corporation and acknowledged the same to be the free act and deed of said corporation, before me.

_____
Notary Public
My Commission expires:

EXHIBIT B

Contract Between the City of Boston and Post Office Square Redevelopment Corporation Pursuant to Section 6A of Chapter 121A of the Massachusetts General Laws

This Agreement made this ____ day of _____, 1985, under Sections 6A, 10 and 15 of Chapter 121A of the General Laws of the Commonwealth of Massachusetts is by and between Post Office Square Redevelopment Corporation, a corporation formed under the laws of the Commonwealth of Massachusetts, (hereinafter called the "Corporation") and the City of Boston, a municipal corporation of the Commonwealth of Massachusetts (hereinafter called the "City").

WITNESSETH THAT:

WHEREAS, Friends of Post Office Square, Inc. has caused to be filed with the Boston Redevelopment Authority (the "Authority") an application dated November 14, 1984, (the"Application") under the provisions of said Chapter 121A of the General Laws and of Chapter 652 of the Acts of 1960, as amended (collectively, "Chapter 121A"), for consent to form the Corporation and for approval of a project (the "Project"), more particularly described in the Application, consisting of the construction of an underground parking garage and grade level urban open space (the "Redevelopment Improvements") in the Project Area (as defined in the Application); and

WHEREAS, the Authority approved the Project and consented to the formation of the Corporation by vote on May 10, 1984; and

WHEREAS, the Mayor of the City approved the Authority's approval on _____, 1984;

WHEREAS, the vote of the Authority and the approval of the Mayor of the City were filed with the office of the City Clerk on _____, 1985, and such approval has become final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, the Corporation was formed by filing its Articles of Organization and a certificate of the Authority evidencing such approval and consent in the Office of the Secretary of the Commonwealth of Massachusetts on _____, 1985, in accordance with the provisions of Chapter 121A.

NOW, THEREFORE:

1. The Corporation hereby agrees with the City as follows:

(a) To carry out the Project and cause the Project to be constructed, maintained and managed in accordance with the Application, the provisions of Chapter 121A of the General Laws as now in effect, and of Chapter 652 of the Acts of 1960 as now in effect, the Minimum Standards for the Financing Construction, Maintenance and Management of the Project (the "Standards") set forth in the Report and Decision of the Authority approving the Project, as it may be amended, (the "Report and Decision") the Development Agreement entered into by and among the Corporation, the City and the Authority, and the Regulatory Agreement to be entered into between the Corporation and the Authority and any other agreement with the City and Authority, or either, relating to the Project, all of which are incorporated herein by reference.

(b) To pay to the Commonwealth of Massachusetts for each calendar year during which the Project is subject to Chapter 121A, the urban development excise required under Section 10 of 121A.

(c) Subject to the provisions and limitations of this Agreement, to pay with respect of each of the calendar years during which the Project is subject to Chapter 121A and during which the Corporation, as landlord, receives rent under the proposed garage lease, as described in the Application, the amount, if any, by which the net proceeds of the Corporation computed as hereinafter set forth (the "Net Proceeds") for the year preceding the year in which such payment is due exceeds the urban redevelopment excise payable with respect to such preceding year pursuant to the provisions of Section 10 of Chapter 121A and of this Agreement. Net Proceeds shall be defined as:

(i) the gross income of the Corporation, which for purposes of this Agreement and Section 10 of Chapter 121A shall be all income of the Corporation actually received in any calendar year, including the rent actually received by the Corporation under the proposed ground lease, as described in the Application; less

(ii) the cost of maintenance of the open space portion of the Project (as such maintenance is described and provided for in the Development Agreement).

As part of the review of the financing plan to be submitted by the Corporation to the City under the Development Agreement, the City may require that this paragraph 1(c) be amended to provide for a

portion of the amounts payable to the City to be unsubordinated to debt service, if in connection with such review it determines that notwithstanding such priority payment the Project may be financed solely from revenues of the Project.

(d) To cause to be filed with the Assessing Department of the City of Boston (the "Assessing Department") within ninety (90) days of the end of each calendar year during which this agreement is in effect a statement of the income and expenses of the Project, and the amount invested in the construction of the Project.

(e) To file with the Assessing Department within ninety (90) days of the end of each calendar year during which this Agreement is in effect an audited report with respect to the Corporation, prepared by an independent Certified Public Accountant, consisting of a statment of profit and loss, a balance sheet, a statement of receipts and disbursements for the preceding calendar year, and a certified copy of the Corporation's urban redevelopment excise tax return as submitted to the Department of Revenue.

(f) To submit to the Commissioner of Assessing or a designated representative written authorization to examine all urban redevelopment excise tax returns and attachments thereto filed by the Corporation with the Department of Corporations and Taxation.

2. If in connection with the City's review of the financing plan the City determines that an additional amount above that required to be paid under paragraph 1(c) hereof may be paid by the Corporation to the City at the time of the closing of the construction financing for the Project, and that notwithstanding such payment the Project may be financed solely from the revenues of the Project, the City may require the Corporation to pay to the City from the proceeds of the construction financing such portion of such additional amount as the City deems to be in the best interest of the City.

3. Any amount payable under Paragraph 1(c) hereof shall be paid in accordance with the following schedule:

(a) To the extent that such payment in any calendar year is equal to or less than Two Hundred Fifty Thousand Dollars ($250,000.00), twenty percent (20%) of such payment shall be paid to the collector of the City for deposit in the general fund of the City, and eighty percent (80%) of such payment shall be paid as a gift or grant to The Fund for Parks and Recreation in Boston (the "Park Trust") created pursuant to

Section 53A of Chapter 44 of the General Laws, by instrument dated February 25, 1983, a copy of which is attached hereto.

(b) To the extent that such payment in any calendar year exceeds Two Hundred Fifty Thousand Dollars ($250,000.00), eighty percent (80%) of such excess shall be paid to the collector of the City for deposit in the general fund of the City, and twenty percent (20%) of such excess shall be paid to the Park Trust.

(c) In the event that the Park Trust is terminated, or if under applicable law payments hereunder cannot be made to it, payments required to be made to the Park Trust under this Agreement shall be made in accordance with an amendment to this Agreement or, during any period in which there is no such amendment providing for the disposition of such funds, to the collector of the City.

4. Except as otherwise herein provided, any payment which may become due to the City with respect to any calendar year pursuant to the provisions of this Agreement shall be paid in or within thirty days from the date of filing of the Corporation's urban redevelopment excise return with the Commonwealth of Massachusetts with respect to such calendar year. Any overpayment by the Corporation with respect to any calendar year shall, at the written election of the Corporation, be applied to reduce payments otherwise due hereunder. In the event that the amount of any overpayment is not so applied prior to the date on which the next payment by the Corporation becomes due under this Agreement, the Corporation shall, notwithstanding anything else herein to the contrary, be entitled to offset the amount of such overpayment against such next payment. Nothing herein shall limit the Corporation's rights under law to recover any alleged overpayment.

5. The Corporation intends to enter into a lease of the land or improvements within the Project Area which provides for rental payments to the Corporation based in whole or in part on income from operations of the proposed garage, and agrees with the City that such lease shall require the lessee thereunder to submit to the Assessors, upon request, within ninety (90) days of the end of each calendar year for which this Agreement and the lease are in effect an audited report, prepared by an independent Certified Public Accountant, consisting of a statement of profit and loss from garage operations, a balance sheet, a statement of receipts from garage operations and related disbursements for the preceding calendar year, and such other financial information as the Assessing Department reasonably may require.

6. The obligations of the Corporation under this Agreement and the Application are conditioned in all respects upon the receipt of all necessary approvals under Chapter 121A and acquisition by the Corporation of the real property on which the Project is to be constructed.

7. The Authority has extended the fifteen-year period of exemption from taxation for the Project to forty years, under the provisions of Chapter 121A, Section 10. Subject to the agreements, instruments and documents referred to in Paragraph 1(a) hereof, the Corporation and the City agree that, after notice to the Authority and the City, the Corporation, subject to the Report and Decision, may terminate the period of tax exemption, pursuant to the second paragraph of Section 6A of Chapter 121A. Upon such election, the Corporation shall have the rights, privileges and duties of a corporation subject to Chapter 156 of the General Laws. The Corporation and the City agree that in the event of such a termination, and until such time as the 121A status of the Corporation would have expired but for the provisions of this paragraph, the Corporation shall pay to the City with respect to each calendar year the amount, if any, by which the amount which would have been payable under Section 10 of Chapter 121A and the provisions of this Agreement exceeds the amount paid to the City in such year as taxes on the Project, and that such payment shall be made in accordance with the provisions of Paragraph 3 hereof. Upon termination of Corporation's ownership in accordance with the Report and Decision and the agreements referred to herein, the Corporation's payment obligations hereunder will terminate.

8. The Corporation and the City agree with each other that, without mutual consent, any amendment subsequent to the delivery of this contract of any of the provisions of Chapter 121A of the General Laws or of Chapter 652 of the Acts of 1960 or of the Rules and Regulations or Standards now applicable to the Project shall not affect this Agreement.

9. Subject to the provisions of Chapter 121A, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Executed as a sealed instrument the day and year first above written.

POST OFFICE SQUARE
REDEVELOPMENT CORPORATION

By_____

CITY OF BOSTON

By_____
Mayor

By_____
Commissioner of Assessing

CABLE: GILMAC

GILMAN, McLAUGHLIN & HANRAHAN
COUNSELLORS AT LAW
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BOSTON, MASSACHUSETTS 02210

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January 14, 1986

BY HAND

Kane Simonian, Secretary
Boston Redevelopment Authority
Offices of the BRA, 9th Floor
New City Hall
Boston, Massachusetts

Re: Application of Post Office Square Redevelopment Corporation

Dear Mr. Simonian:

I am enclosing herewith a Motion which I desire to have filed in the above-entitled matter and which I will take up with the Board at the continued hearing of this Application.

I have furnished a copy of the within Motion by having the same delivered today to James B. White, Esquire, Palmer and Dodge, One Beacon Street, Boston, MA, the attorney of record for the applicants.

Sincerely yours,

Walter H. McLaughlin, Sr.

WHMSr:ljd
Enclosure

COMMONWEALTH OF MASSACHUSETTS
BOSTON REDEVELOPMENT AUTHORITY

SUFFOLK, ss.

* * * * * * * * * * * * * * * * *
*
IN RE: CHAPTER 121A *
APPLICATION OF POST OFFICE *
SQUARE REDEVELOPMENT CORP. *
*
* * * * * * * * * * * * * * * * *

MOTION TO AMEND REPORT AND DECISION
OF THE BOSTON REDEVELOPMENT AUTHORITY
DATED MAY 10, 1984

Now comes First Franklin Corporation, the Lessee of the property presently described as "The Project Area", and commonly known as the Post Office Square Garage and moves for leave to submit supplemental evidence so that the Authority may amend the Decision and Report of the Boston Redevelopment Authority ("the Board") dated May 10, 1984 by striking out the first paragraph of (B), subparagraph (d), described as "The Project Area" in said Report, and any other portions of the report where the passage of time requires the amendment of the Board's findings and conclusions and assigns as cause therefore the following:

1. The findings made by the Boston Redevelopment Authority as therein set forth were based upon "the evidence contained in the application and presented at the public hearing, an inspection of The Project Area by the members of the Authority and the Report of Simpson, Gumpertz & Hagger, Inc., consulting engineers to the Board."

2. The inspection by Simpson, Gumpertz & Hagger, Inc. is dated March 3, 1984 and the finding of the Board was dated May 10, 1984.

3. The finding of the Board that The Project Area is decadent as that term is defined in Section 1, Chap. 121A is now twenty months old. Since that period of time, extensive repairs, costing several hundred thousands of dollars have been made to The Project Area and said findings no longer reflect the true condition of The Project Area as will be established by evidence to be presented at said continued hearing.

4. The evidence presented concerning financial feasibility and cost of the project is over two years old. There have been substantial changes which render many of the assumptions inaccurate.

First Franklin Corporation
By Its Attorneys,

Walter H. McLaughlin, Sr.
Gilman, McLaughlin & Hanrahan
470 Atlantic Avenue
Boston, MA 02210
Telephone: (617) 482-1900

Dated: Jan. 14-1986

1208C

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE ATTORNEY GENERAL
JOHN W. Mc CORMACK STATE OFFICE BUILDING
ONE ASHBURTON PLACE, BOSTON 02108-1698

FRANCIS X. BELLOTTI
ATTORNEY GENERAL

November 6, 1985

Ira A. Jackson
Commissioner of Revenue
Department of Revenue
100 Cambridge Street
Boston, MA 02204

Dear Commissioner Jackson:

Pursuant to G.L. c. 58, § 1A, ¶ 5,[1] you have asked my opinion on a question relating to computation of the excise tax due from a development project proposed under G.L. c. 121A.[2]

1/ That statute provides in relevant part that:

> [the Commissioner of Revenue] shall, at the request of the assessors of any city or town or upon his own initiative, give his opinion to assessors and collectors upon any question arising under any statute relating to the assessment, classification and collection of taxes or he may obtain the opinion of the attorney general upon such question.

Your request states that your opinion on this question had previously been asked by the Commissioner of Assessing of the City of Boston.

2/ Chapter 121A has received extensive attention from both the legislative and judicial branches of government. As originally adopted, chapter 121A "was an attempt to eliminate substandard living conditions in urban areas by utilizing private capital to

(footnote continued)

Your letter states the facts giving rise to your request as follows. A corporation organized under chapter 121A will acquire the property in question from the City of Boston and would then give a forty-year ground lease to develop and operate that property to a limited partnership that would not be organized under that statute.3/ The partnership would demolisn the building now on the site and construct and operate

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(footnote continued)

revitalize decaying urban areas. St. 1945, c. 654, §§ 1 and 3." Bronstein v. Prudential Insurance Co., 390 Mass. 701, 704 (1984). In 1960, chapter 121A was amended to include construction of commercial, industrial, and other non-residential buildings. Id. Despite that change, however, "the fundamental underpinning of the statute remained the same, i.e., that such projects be undertaken for a public purpose." Id. at 704-05 (citing Opinion of the Justices, 341 Mass. 760, 776-77 (1960)).

This public purpose is accomplished, however, through reliance on private corporations or, as permitted by G.L. c. 121A, § 18C, individuals or other entities regulated or organized pursuant to chapter 121A. But see G.L. c. 121A, § 8 (every chapter 121A corporation "shall be deemed to have been organized to serve a public purpose. . ."). Thus "[a]lthough there is some measure of supervision and participation by a public agency, urban renewal projects under c. 121A are primarily conceived of and implemented by the private corporations which will operate them. Further, these projects receive large public benefits [through the tax concessions in G.L. c. 121A, § 10]." Boston Edison Co. v. Boston Redevelopment Authority, 374 Mass. 37, 50 (1977).

3/ At the expiration of the lease, title to the property would be transferred from the corporation to the City of Boston.

a large underground garage. The surface of the site would be maintained as a park. During the term of that lease the chapter 121A corporation would receive a percentage of the partnership's net income together with certain fixed sums. The precise question you have referred to me is whether, in those circumstances, "it is permissible for the computation of the gross income portion of the excise imposed by G.L. c. 121A, § 10, to be based on the gross income of the c. 121A corporation rather than the gross income of the entire 121A project."[4/] In the circumstances described by your letter, it is my opinion that it is not only "permissible" but, except as discussed below, ordinarily to be anticipated that the computation be based on the income of the chapter 121A corporation.

My first ground for that opinion is the clear and unambiguous language of the statute, which must be given its ordinary meaning. Bronstein v. Prudential Insurance Co., 390 Mass. 701, 704 (1984). In relevant part, G.L. c. 121A, § 10, ¶ 3, provides:

> . . . [S]uch corporation shall pay in each calendar year to the commonwealth . . . an

4/ I assume that by "the entire project" you refer to the partnership that will actually develop and operate the underground garage.

> excise . . . equal to five per cent of its gross income in such preceding calendar year . . . .

The obvious antecedent of "its" in that provision is "such corporation," and so the intent of the Legislature appears to be that the relevant excise on the corporation will be measured solely by reference to that corporation's income.

Any contrary reading would immediately lead to serious difficulties and therefore should be avoided. See Adamowicz v. Ipswich, 395 Mass. 757, 760 (1985) (statutes should be construed so as to produce workable results). For example, looking beyond the income of the chapter 121A corporation would clearly be inappropriate in the majority of chapter 121A projects which involve residential development. Obviously, the Legislature did not intend that the amount of a chapter 121A corporation's excise should depend on the amounts of its tenants' personal incomes. Furthermore, even in commercial chapter 121A projects, there seems to be no basis for looking beyond the corporation's income. The intended measure of the excise assessed on the gross income of a chapter 121A corporation that is a commercial lessor logically should be that corporation's own gross income rather than the gross income of the various entities that may lease office space from it.

This result follows not only from the plain language of G.L. c. 121A, § 10, ¶ 3, but also from the purpose which I believe underlies the excise imposed by that provision. That excise tax is assessed in lieu of the local property tax from which the chapter 121A corporation is exempted by G.L. c. 121A, § 10. See Opinion of the Justices, 341 Mass. 760, 774 (1960). Gross income derived from occupancy of a piece of property is one indication of the property's value, cf. Alstores Realty Corp. v. Board of Assessors of Peabody, 391 Mass. 60, 66-69 (1984), and it is also commonly used as a basis for measuring excise taxes. See, e.g., G.L. c. 63, § 22A (gross investment income); Commissioner of Revenue v. Massachusetts Mutual Insurance Co., 384 Mass. 607, 612 (1981). On the other hand, the gross income of the corporation's lessees measures their individual business success or the value of their individual leases to them; in neither case does that income seem rationally related to the value of the tax exemptions granted to the chapter 121A corporation.

The fact that the lease proposed here is a forty-year ground lease to develop the property and operate a garage on it rather than a short-term commercial lease for office space may have practical and financial consequences for the project, but

I see no reason to infer that the Legislature intended that fact, standing alone, to require different treatment for purposes of section 10. Indeed, chapter 121A elsewhere discusses "ground rent," the payment made under a ground lease, in terms that suggest that a "ground lease" for purposes of chapter 121A should be viewed as simply one specific category of a "lease" rather than as a distinct form of legal interest. See G.L. c. 121A, § 15(1) ("expenses . . . including any ground rents or other payments under any lease . . ."). See also G.L. c. 121A, § 10, ¶ 9 ("gross income" includes "payments actually made by persons for the right to . . . occupy . . . all of the project . . .").

For these reasons, I conclude that the answer to your question is that the relevant income under G.L. c. 121A, § 10, ¶ 3, is that of the chapter 121A corporation and not that of the limited partnership.[5/]

5/ Of course in taxing that income, the Department of Revenue may exercise its statutory powers to verify the corporation's return and, if warranted, to assess any additional tax it finds, as a matter of fact, to be due. See G.L. c. 121A, § 10, ¶ 5; G.L. c. 62C, § 26(b); cf. Brown, Rudnick, Freed & Gesmer v. Board of Assessors of Boston, 389 Mass. 298, 303 (1983); Massachusetts Pike Towers Associates v. Commissioner of Revenue, 381 Mass. 584 (1980).

This opinion is limited to answering the precise question you have asked. I do not hereby express any views as to the legality, propriety, or wisdom of the proposed project in terms of chapter 121A or other provisions of law. Cf. 1961/62 Op. Atty. Gen., Rep. A.G., Pub. Doc. No. 12 at 199, 200-01 (1962). Your request for an opinion notes, and other comments I have received argue, that the proposed project may not be authorized by G.L. c. 121A or may be otherwise unlawful.[6/]

6/ It has been argued that by giving a forty-year ground lease to the partnership, the corporation will "transfer in whole or in part the land or interests therein . . ." to an entity not organized under chapter 121A and so will violate G.L. c. 121A, § 11, ¶ 3. It has also been suggested that the terms of the ground lease between the chapter 121A corporation and the limited partnership may not reflect an ordinary, arms' length commercial transaction. Cf. 760 C.M.R. § 25.09(4)(a) (regulations of the Executive Office of Communities and Development making 5% of gross rental the maximum fee paid by a state-regulated chapter 121A entity to a project manager). Finally, it has also been suggested that the limited partnership should itself be considered the true developer of the garage and taxed accordingly or that it should be treated as the developer of a separate subproject falling under chapter 121A for which a separate excise payment would be due. Cf. G.L. c. 121A, § 1, ¶ 6 ("project" defined as "construction . . . operation and maintenance . . ." without explicit reference to formal ownership). On the other hand, the proponents of the project, the City of Boston, and certain other officials have responded to each of those arguments and have also stressed what they perceive would be the substantial financial and esthetic benefits the proposed project would have for Boston and the overall public interest.

It would be inappropriate for me to address those arguments for three basic reasons. First, I have not been directly asked for an opinion on those matters; your specific request relates only to "the computation of the gross income portion of the excise" and so is quite narrow. In issuing formal opinions it has been my consistent policy to answer only those questions explicitly presented to me and those which must necessarily be resolved to answer the questions explicitly asked. Cf. Opinion of the Justices, 386 Mass. 1201, 1221 (1982) (Supreme Judicial Court advisory opinions are confined to the particular questions of law submitted to the Court).

Second, even if you had explicitly asked for an opinion on one or more of the broader questions mentioned above, I would respectfully have to decline an answer. It has been my consistent policy, and that of my predecessors, to issue formal opinions on only those questions that involve matters which are within the specific area of authority of the officer or agency making the request. 1967/68 Op. Atty. Gen. No. 30, Rep. A.G., Pub. Doc. No. 12 at 95, 96 (1967); cf. Opinion of the Justices, 386 Mass. 1201, 1219-20 (1982) (Supreme Judicial Court renders advisory opinions only as necessary to enable state departments to perform their duties). Your general duties with respect to

G.L. c. 121A are limited and appear to involve only the "administration of taxes" rather than oversight over the operation or enforcement of chapter 121A generally. See G.L. c. 121A, § 10, ¶ 5.[7/] Your specific authority to opine on G.L. c. 121A matters is both conferred and limited by G.L. c. 58, § 1A, the statute under which your request was made explicitly. It is limited to "any question arising under any statute relating to the assessment, classification and collection of taxes . . . ." While the narrow question you have asked and I have answered above fits that formula, the broader questions raised by materials submitted to me and discussed in footnote 6 above involve the construction and administration of chapter 121A generally, rather than the specific topic of taxes. Hence they do not fall within the ambit of G.L. c. 58A, § 1A, and I should not answer them.

There is also a third reason why I decline to express any opinion on the broader issues potentially raised by this project. Each of those issues is or may be subject to the explicit oversight of another public agency, namely the Boston

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7/ However, as noted above, in performing those duties you are authorized to exercise all of your authority under G.L. c. 62C. See G.L. c. 121A, § 10, ¶ 5.

Redevelopment Authority, which St. 1960, c. 652, §§ 12-14, designates as the regulatory authority for chapter 121A projects in the City of Boston. See Bronstein v. Prudential Insurance Company, 390 Mass. 701, 705 (1984). Since the Authority has not yet finally approved the project, my opinion would seem both premature and perhaps unnecessary. Cf. 1984/85 Op. Atty. Gen. No. 5, Rep. A.G., Pub. Doc. No. 12 at ___ (1984); 1984/85 Op. Atty. Gen. No. 8, Rep. A.G., Pub. Doc. No. 12 at ___ (1985). Furthermore, it is certainly possible and perhaps quite likely, in view of the material I have received strenuously opposing the project, that litigation will be commenced which will raise some or all of the broad issues mentioned above. In such circumstances no opinion of this office would resolve the matter and so, as has been my consistent practice and that of my predecessors, none should be given. 1975/76 Op. Atty. Gen. No. 37, Rep. A.G., Pub. Doc. No. 12 at 121 (1976); see also G.L. c. 58, § 1A, ¶ 5 (Attorney General's opinion, when given, is to be "binding"). Significant legal questions such as those mentioned above may be resolved through litigation, and where, as provided by St. 1960, c. 652, §§ 13-14, any private person aggrieved has

standing to seek judicial review,[8/] the courts are the only forum that can provide a definitive resolution that will be binding upon all interested parties, both private and public.

Very truly yours,

FRANCIS X. BELLOTTI
ATTORNEY GENERAL

8/ See, e.g., Boston Edison Company v. Boston Redevelopment Authority, 374 Mass. 37, 43 (1977).

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